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NOTE: The information in this booklet is believed to be correct at the time of publication. Rules and policies may change, so examinees are advised to consult NCBE's website for the most current information.



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NOTICE TO EXAMINEES

The National Conference of Bar Examiners (NCBE) assists bar admission authorities by developing bar examination components, including the MBE. NCBE holds the copyright to these exams and to their content, and exam content may be considered for reuse in future exams or in copyrighted educational materials. Both disclosure of exam content and cheating on a test are prohibited, as such practices undermine the integrity and fairness of the examination process.

The following conduct is prohibited during the examination:

- bringing unauthorized electronic devices (whether turned on or off) or unauthorized materials into the testing room, including, but not limited to, cell phones, watches, calculators, cameras, personal digital assistants, text messaging devices, audio or video recording devices, scanners, language translators, and written materials (including books and notes);
- taking test materials out of the testing room during any scheduled or unscheduled break or at the conclusion of the testing period;
- creating or causing a disruption or disturbance;
- copying answers from another examinee or sharing answers with another examinee; and
- continuing to work after a supervisor has instructed examinees to stop writing.

The following conduct is prohibited after the examination:

- sharing the substance or details of any test question, including the question's fact pattern, option choices, or answer, in whole or in part, with anyone via electronic (including e-mail, blogs, and online social and professional networking sites), telephonic, written, oral, or other means;
- reproducing, paraphrasing, summarizing, or describing to any other person any test content from memory after leaving the testing room; and
- forwarding, re-posting, hosting, or otherwise advancing the distribution of exam content, on the Internet or via other means, that others have disclosed.

Unauthorized disclosure of exam content or engaging in prohibited conduct during the examination could result in some or all of the following penalties:

- civil liability,
- criminal penalties,
- cancellation of the examinee's test scores,
- denial of the examinee's application to sit for future exams,
- denial of the examinee's bar application on character and fitness grounds, and
- disciplinary action by a bar authority if the examinee is already admitted to practice law.

Introduction

The Multistate Bar Examination

The Multistate Bar Examination (MBE) is developed by the National Conference of Bar Examiners (NCBE) and is administered by participating jurisdictions on the last Wednesday in February and the last Wednesday in July of each year. This booklet provides the examinee with a general description of the MBE, instructions for test day, outlines of the subject matter covered, score information, and sample questions.

Jurisdiction Information

Examinees should contact the jurisdiction to which they seek admission to ascertain whether the MBE is administered as a part of the jurisdiction's bar examination. Each jurisdiction determines its own policy with regard to the relative weight given to the MBE and other scores. (Jurisdictions that administer the Uniform Bar Examination [UBE] weight the MBE component 50%.) To obtain information about bar admission requirements or to apply for admission to the bar, examinees should contact the appropriate jurisdiction. Contact information for jurisdictions can be found in the Bar Admission Offices Directory at www.ncbex.org.

About the National Conference of Bar Examiners

NCBE is a not-for-profit corporation founded in 1931. The mission of the Conference is to work with other institutions to develop, maintain, and apply reasonable and uniform standards of education and character for eligibility for admission to the practice of law; and to assist bar admission authorities by providing standardized examinations of uniform and high quality for the testing of applicants for admission to the practice of law, disseminating relevant information concerning admission standards and practices, conducting educational programs for the members and staffs of such authorities, and providing other services such as character and fitness investigations and research.

Copyright Notice

The MBE is owned by NCBE and is a secure exam protected by U.S. copyright laws. NCBE strictly prohibits copying, reproducing, or disclosing any MBE questions or answers, whether via electronic, telephonic, written, oral, or other means, to any party or to any public forum during or after the exam. NCBE will use every legal means available to protect its copyrighted materials. Any unauthorized disclosure of MBE content could result in civil liability, criminal penalties, cancellation of test scores, denial of applications to sit for future exams, denial of bar applications on character and fitness grounds, and/or disciplinary action by bar authorities.

Accommodations for Persons with Disabilities

An examinee with a documented disability may be eligible for auxiliary aids or services in order to complete the MBE. The standard version of the MBE is printed in 12-point Times New Roman font. The MBE is also routinely available in Braille, in large-print (18- and 24-point Helvetica font) versions, and on audio CD. All decisions and arrangements for these or other accommodations are made by the jurisdictions, and each jurisdiction has its own formal application and approval process. Examinees seeking accommodations must apply separately to each jurisdiction in which they plan to take the MBE. Contact information for each jurisdiction's bar admissions office can be found in the Bar Admission Offices Directory at www.ncbex.org.

Test Preparation

NCBE publishes study aids for the MBE containing questions that have been retired from use. These study aids can be purchased from NCBE by visiting the NCBE Study Aids Store at www.ncbex.org. Many of these questions are also available through licensees who have obtained NCBE's permission to reproduce copyrighted materials. Actual retired MBE questions always appear with NCBE's copyright acknowledgment.

The MBE Online Practice Exams

The MBE Online Practice Exams (OPEs) are 100-question, annotated online practice exams that use questions drawn from recently administered MBEs. Purchasing an MBE OPE gives an examinee a subscription for online access to that practice exam, for unlimited trials, expiring one year after the date of purchase. Examinees can take the practice exams timed or untimed and receive feedback on their answers, including annotations and a customized score report designed to help identify strengths and weaknesses in the six MBE subject areas. The practice exams are available only online.

Other Materials

Retired questions drawn from the MBEs administered in February and July 1991 are available as the *Sample MBE I* and *Sample MBE II*. These publications include answer keys but do not offer annotations and may contain outdated question formats. Examinees are advised not to use these study aids as substantive preparation for the MBE. Due to changes in the law since the time the questions appeared on an exam, the questions and their keys may no longer be current. A series of retired questions that appeared on MBEs administered between 1972 and 1991, and the 200-question MBE administered in July 1998, are available at no cost on the NCBE website. Again, these questions are not recommended for substantive preparation for the MBE. Additional sample questions are available on pages 18–25 of this booklet.

Description of the Examination

The MBE contains 200 multiple-choice questions, 190 of which are scored. The 10 unscored questions are being evaluated for future use; because these questions are indistinguishable from scored questions, examinees should answer all 200 questions. The exam is divided into morning and afternoon testing sessions of three hours each, with 100 questions in each session. The 190 scored questions on the MBE are distributed as follows: Constitutional Law (31), Contracts (33), Criminal Law and Procedure (31), Evidence (31), Real Property (31), and Torts (33). In the subject matter outlines that are provided on pages 7–13, all major topics designated by roman numerals are tested on each exam, but not all of the subtopics appear on each exam.

The purpose of the MBE is to assess the extent to which an examinee can apply fundamental legal principles and legal reasoning to analyze given fact patterns.

MBE questions are developed by drafting committees composed of recognized experts in the various subject areas. Before a test question is selected for inclusion in the MBE, it undergoes a multistage review process over the course of several years. Besides intensive review by the drafting committee members and testing specialists, each test question is reviewed by other national and state experts. All test questions must successfully pass all reviews before they are included in the MBE.

Instructions for Test Day

What to Bring and What Not to Bring

MBE examinees should bring several No. 2 black lead pencils to their assigned test center. Each jurisdiction will provide specific information regarding other materials, including appropriate identification, that examinees should bring with them to the test center.

In all events, examinees are not permitted to bring the following items into MBE test centers:

- cell phones
- pagers
- text messaging devices
- portable media players
- personal digital assistants, handheld computers, or wireless e-mail devices
- audio or video recording devices
- cameras, scanners, or other picture-taking devices
- language translators
- radios or tape recorders
- mechanical pencils, pens, or highlighters
- written materials, such as books or notes
- scratch paper
- calculators
- rulers
- backpacks, purses, or briefcases
- hats, earplugs, or headphones
- watches
- alarms

Each jurisdiction will provide specific information regarding other materials that are prohibited in MBE test centers.

Prohibited Behaviors

Test security procedures are designed to ensure that examinees have an equal opportunity to demonstrate their knowledge and skills, that examinees who do their own work are not unfairly disadvantaged by examinees who do not, and that scores reported for each examinee are valid. The following conduct is prohibited at MBE test centers:

- bringing unauthorized devices (whether turned on or off) or unauthorized materials into the testing room (see the list above)
- removing or attempting to remove test materials or information, including test questions or answers, or any unauthorized items from the testing room during any scheduled or unscheduled break or at the conclusion of the testing period
- looking at another examinee's test booklet or answer sheet
- giving or receiving assistance on the exam
- using any device to share or exchange information
- using unauthorized aids

- creating a disturbance
- continuing to work after a supervisor has instructed examinees to stop writing

Examinees may not retain any test materials. Pages or covers of test booklets are not to be torn out of or separated from the test booklets in any way. Examinees are not permitted to duplicate or record, by copying, photographing, or any other means, any part of the MBE. All test materials, including test booklets and answer sheets, must be returned intact to the test supervisor after testing. The following conduct is prohibited after the examination:

- sharing the substance or details of any test question, including the question's fact pattern, option choices, or answer, in whole or in part, with anyone via electronic (including e-mail, blogs, and online social and professional networking sites), telephonic, written, oral, or other means
- reproducing, paraphrasing, summarizing, or describing to any other person any test content from memory after leaving the testing room
- forwarding, re-posting, hosting, or otherwise advancing the distribution of exam content, on the Internet or via other means, that others have disclosed

Each jurisdiction will provide specific information regarding other behaviors that may be prohibited. Each jurisdiction will also provide specific instructions regarding restroom procedures, test booklet and answer sheet collection procedures, and dismissal procedures.

Taking the Test

Each of the questions on the MBE is followed by four possible answers. Examinees should choose the best answer from the four stated alternatives. Each question on the MBE is designed to be answered according to generally accepted fundamental legal principles, unless noted otherwise in the question. Examinees should mark only one answer for each question; multiple answers will be scored as incorrect. Since scores are based on the number of questions answered correctly, examinees are advised to answer every question. If a question seems too difficult, examinees are advised to go on to the next one and come back to the skipped question later. Each jurisdiction will provide specific instructions regarding the appropriate marking of answer sheets.

Subject Matter Outlines

Constitutional Law

NOTE: The terms “Constitution,” “constitutional,” and “unconstitutional” refer to the federal Constitution unless indicated otherwise. Approximately half of the Constitutional Law questions on the MBE will be based on category IV, and approximately half will be based on the remaining categories—I, II, and III.

- I. The nature of judicial review
 - A. Organization and relationship of state and federal courts in a federal system
 - B. Jurisdiction
 1. Constitutional basis
 2. Congressional power to define and limit
 3. The Eleventh Amendment and state sovereign immunity
 - C. Judicial review in operation
 1. The “case or controversy” requirement, including the prohibition on advisory opinions, standing, ripeness, and mootness
 2. The “adequate and independent state ground”
 3. Political questions and justiciability
- II. The separation of powers
 - A. The powers of Congress
 1. Commerce, taxing, and spending powers
 2. War, defense, and foreign affairs powers
 3. Power to enforce the 13th, 14th, and 15th Amendments
 4. Other powers
 - B. The powers of the president
 1. As chief executive, including the “take care” clause
 2. As commander in chief
 3. Treaty and foreign affairs powers
 4. Appointment and removal of officials
- C. Federal interbranch relationships
 1. Congressional limits on the executive
 2. The presentment requirement and the president’s power to veto or to withhold action
 3. Non-delegation doctrine
 4. Executive, legislative, and judicial immunities
- III. The relation of nation and states in a federal system
 - A. Intergovernmental immunities
 1. Federal immunity from state law
 2. State immunity from federal law, including the 10th Amendment
 - B. Federalism-based limits on state authority
 1. Negative implications of the commerce clause
 2. Supremacy clause and preemption
 3. Full faith and credit
 4. Authorization of otherwise invalid state action
- IV. Individual rights
 - A. State action
 - B. Due process
 1. Substantive due process
 - a. Fundamental rights
 - b. Other rights and interests
 2. Procedural due process, including personal jurisdiction
 - C. Equal protection
 1. Fundamental rights
 2. Classifications subject to heightened scrutiny
 3. Rational basis review
 - D. Takings
 - E. Other protections, including the privileges and immunities clauses, the contracts clause, unconstitutional conditions, bills of attainder, and ex post facto laws

- F. First Amendment freedoms
 - 1. Freedom of religion and separation of church and state
 - a. Free exercise
 - b. Establishment
 - 2. Freedom of expression
 - a. Content-based regulation of protected expression
 - b. Content-neutral regulation of protected expression
 - c. Regulation of unprotected expression
 - d. Regulation of commercial speech
 - e. Regulation of, or impositions upon, public school students, public employment, licenses, or benefits based upon exercise of expressive or associational rights
 - f. Regulation of expressive conduct
 - g. Prior restraint, vagueness, and overbreadth
 - 3. Freedom of the press
 - 4. Freedom of association

Contracts

NOTE: Examinees are to assume that Article 2 and Revised Article 1 of the Uniform Commercial Code have been adopted and are applicable when appropriate. Approximately half of the Contracts questions on the MBE will be based on categories I and IV, and approximately half will be based on the remaining categories—II, III, V, and VI. Approximately one-fourth of the Contracts questions on the MBE will be based on provisions of the Uniform Commercial Code, Article 2 and Revised Article 1.

- I. Formation of contracts
 - A. Mutual assent
 - 1. Offer and acceptance
 - 2. Indefiniteness or absence of terms
 - 3. Implied-in-fact contract
 - 4. “Pre-contract” obligations based on reliance
 - B. Consideration
 - 1. Bargain and exchange and substitutes for bargain: “moral obligation,” reliance, and statutory substitutes

- 2. Modification of contracts: preexisting duties
 - 3. Compromise and settlement of claims
- II. Defenses to enforceability
 - A. Incapacity to contract
 - B. Duress
 - C. Undue influence
 - D. Mistake, misunderstanding
 - E. Fraud, misrepresentation, and nondisclosure
 - F. Illegality, unconscionability, and public policy
 - G. Statute of frauds
- III. Parol evidence and interpretation
- IV. Performance, breach, and discharge
 - A. Conditions
 - 1. Express
 - 2. Constructive
 - 3. Obligations of good faith and fair dealing in performance and enforcement of contracts
 - 4. Suspension or excuse of conditions by waiver, election, or estoppel
 - 5. Prospective inability to perform: effect on other party
 - B. Impracticability and frustration of purpose
 - C. Discharge of contractual duties
 - D. Express and implied warranties in sale-of-goods contracts
 - E. Substantial and partial breach and anticipatory repudiation
- V. Remedies
 - A. Measure of damages for breach; protecting the expectation interest
 - B. Consequential damages: causation, certainty, and foreseeability
 - C. Liquidated damages and penalties
 - D. Avoidable consequences and mitigation of damages
 - E. Rescission and reformation
 - F. Specific performance; injunction against breach; declaratory judgment
 - G. Restitutionary and reliance recoveries
 - H. Remedial rights of breaching parties

- VI. Third-party rights
 - A. Third-party beneficiaries
 - 1. Intended beneficiaries
 - 2. Incidental beneficiaries
 - 3. Impairment or extinguishment of third-party rights
 - 4. Enforcement by the promisee
 - B. Assignment of rights and delegation of duties

Criminal Law and Procedure

NOTE: Approximately half of the Criminal Law and Procedure questions on the MBE will be based on category V, and approximately half will be based on the remaining categories—I, II, III, and IV.

- I. Homicide
 - A. Intended killings
 - 1. Premeditation, deliberation
 - 2. Provocation
 - B. Unintended killings
 - 1. Intent to injure
 - 2. Reckless and negligent killings
 - 3. Felony murder
 - 4. Misdemeanor manslaughter
- II. Other crimes
 - A. Theft
 - 1. Larceny
 - 2. Embezzlement
 - 3. False pretenses
 - B. Receiving stolen goods
 - C. Robbery
 - D. Burglary
 - E. Assault and battery
 - F. Rape; statutory rape
 - G. Kidnapping
 - H. Arson
 - I. Possession offenses
- III. Inchoate crimes; parties
 - A. Inchoate offenses
 - 1. Attempts
 - 2. Conspiracy
 - 3. Solicitation
 - B. Parties to crime
- IV. General principles
 - A. Acts and omissions
 - B. State of mind

- 1. Required mental state
- 2. Strict liability
- 3. Mistake of fact or law
- C. Responsibility
 - 1. Mental disorder
 - 2. Intoxication
- D. Causation
- E. Justification and excuse
- F. Jurisdiction
- V. Constitutional protection of accused persons
 - A. Arrest, search and seizure
 - B. Confessions and privilege against self-incrimination
 - C. Lineups and other forms of identification
 - D. Right to counsel
 - E. Fair trial and guilty pleas
 - F. Double jeopardy
 - G. Cruel and unusual punishment
 - H. Burdens of proof and persuasion

Evidence

NOTE: All Evidence questions should be answered according to the Federal Rules of Evidence, as restyled in 2011. Approximately one-third of the Evidence questions on the MBE will be based on category I, one-third on category V, and one-third on the remaining categories—II, III, and IV.

- I. Presentation of evidence
 - A. Introduction of evidence
 - 1. Requirement of personal knowledge
 - 2. Refreshing recollection
 - 3. Objections and offers of proof
 - 4. Lay opinions
 - 5. Competency of witnesses
 - 6. Judicial notice
 - 7. Roles of judge and jury
 - 8. Limited admissibility
 - B. Presumptions
 - C. Mode and order
 - 1. Control by court
 - 2. Scope of examination
 - 3. Form of questions
 - 4. Exclusion of witnesses

- D. Impeachment, contradiction, and rehabilitation
 - 1. Inconsistent statements and conduct
 - 2. Bias and interest
 - 3. Conviction of crime
 - 4. Specific instances of conduct
 - 5. Character for truthfulness
 - 6. Ability to observe, remember, or relate accurately
 - 7. Impeachment of hearsay declarants
 - 8. Rehabilitation of impeached witnesses
 - 9. Contradiction
- E. Proceedings to which evidence rules apply
- II. Relevancy and reasons for excluding relevant evidence
 - A. Probative value
 - 1. Relevancy
 - 2. Exclusion for unfair prejudice, confusion, or waste of time
 - B. Authentication and identification
 - C. Character and related concepts
 - 1. Admissibility of character
 - 2. Methods of proving character
 - 3. Habit and routine practice
 - 4. Other crimes, acts, transactions, and events
 - 5. Prior sexual misconduct of a defendant
 - D. Expert testimony
 - 1. Qualifications of witnesses
 - 2. Bases of testimony
 - 3. Ultimate issue rule
 - 4. Reliability and relevancy
 - 5. Proper subject matter for expert testimony
 - E. Real, demonstrative, and experimental evidence
- III. Privileges and other policy exclusions
 - A. Spousal immunity and marital communications
 - B. Attorney-client and work product
 - C. Physician/psychotherapist-patient
 - D. Other privileges
 - E. Insurance coverage
 - F. Remedial measures
 - G. Compromise, payment of medical expenses, and plea negotiations

- H. Past sexual conduct of a victim
- IV. Writings, recordings, and photographs
 - A. Requirement of original
 - B. Summaries
 - C. Completeness rule
- V. Hearsay and circumstances of its admissibility
 - A. Definition of hearsay
 - 1. What is hearsay
 - 2. Prior statements by witness
 - 3. Statements attributable to party-opponent
 - 4. Multiple hearsay
 - B. Present sense impressions and excited utterances
 - C. Statements of mental, emotional, or physical condition
 - D. Statements for purposes of medical diagnosis and treatment
 - E. Past recollection recorded
 - F. Business records
 - G. Public records and reports
 - H. Learned treatises
 - I. Former testimony; depositions
 - J. Statements against interest
 - K. Other exceptions to the hearsay rule
 - L. Right to confront witnesses

Real Property

NOTE: Approximately one-fifth of the Real Property questions on the MBE will be based on each of the categories I through V.

- I. Ownership
 - A. Present estates
 - 1. Fees simple
 - 2. Defeasible fees simple
 - 3. Life estates
 - B. Future interests
 - 1. Reversions
 - 2. Remainders, vested and contingent
 - 3. Executory interests
 - 4. Possibilities of reverter, powers of termination
 - 5. Rules affecting these interests

- C. Cotenancy
 - 1. Types
 - a. Tenancy in common
 - b. Joint tenancy
 - 2. Severance
 - 3. Partition
 - 4. Relations among cotenants
 - 5. Alienability, descendibility, devisability
 - D. The law of landlord and tenant
 - 1. Types of holdings: creation and termination
 - a. Terms for years
 - b. Tenancies at will
 - c. Holdovers and other tenancies at sufferance
 - d. Periodic tenancies
 - 2. Possession and rent
 - 3. Assignment and subletting
 - 4. Termination (surrender, mitigation of damages, and anticipatory breach)
 - 5. Habitability and suitability
 - E. Special problems
 - 1. Rule Against Perpetuities: common law and as modified
 - 2. Alienability, descendibility, and devisability
 - 3. Fair housing/discrimination
- II. Rights in land
- A. Covenants at law and in equity
 - 1. Nature and type
 - 2. Creation
 - 3. Scope
 - 4. Termination
 - B. Easements, profits, and licenses
 - 1. Nature and type
 - 2. Methods of creation
 - a. Express
 - b. Implied
 - i. Quasi-use
 - ii. Necessity
 - iii. Plat
 - c. Prescription
 - 3. Scope
 - 4. Termination
- C. Fixtures (including relevant application of Article 9, UCC)
- D. Zoning (fundamentals other than regulatory taking)
- III. Contracts
- A. Real estate brokerage
 - B. Creation and construction
 - 1. Statute of frauds and exceptions
 - 2. Essential terms
 - 3. Time for performance
 - 4. Remedies for breach
 - C. Marketability of title
 - D. Equitable conversion (including risk of loss)
 - E. Options and rights of first refusal
 - F. Fitness and suitability
 - G. Merger
- IV. Mortgages/security devices
- A. Types of security devices
 - 1. Mortgages (including deeds of trust)
 - a. In general
 - b. Purchase-money mortgages
 - c. Future-advance mortgages
 - 2. Land contracts
 - 3. Absolute deeds as security
 - B. Some security relationships
 - 1. Necessity and nature of obligation
 - 2. Theories: title, lien, and intermediate
 - 3. Rights and duties prior to foreclosure
 - 4. Right to redeem and clogging equity of redemption
 - C. Transfers by mortgagor
 - 1. Distinguishing “subject to” and “assuming”
 - 2. Rights and obligations of transferor
 - 3. Application of subrogation and suretyship principles
 - 4. Due-on-sale clauses
 - D. Transfers by mortgagee
 - E. Payment, discharges, and defenses
 - F. Foreclosure
 - 1. Types
 - 2. Rights of omitted parties
 - 3. Deficiency and surplus
 - 4. Redemption after foreclosure
 - 5. Deed in lieu of foreclosure

V. Titles

- A. Adverse possession
- B. Transfer by deed
 - 1. Warranty and nonwarranty deeds (including covenants for title)
 - 2. Necessity for a grantee and other deed requirements
 - 3. Delivery (including escrows)
- C. Transfer by operation of law and by will
 - 1. In general
 - 2. Ademption
 - 3. Exoneration
 - 4. Lapse
 - 5. Abatement
- D. Title assurance systems
 - 1. Recording acts (race, notice, and race-notice)
 - a. Indexes
 - b. Chain of title
 - c. Protected parties
 - d. Priorities
 - e. Notice
 - 2. Title insurance
- E. Special problems
 - 1. After-acquired title (including estoppel by deed)
 - 2. Forged instruments and undelivered deeds
 - 3. Purchase-money mortgages
 - 4. Judgment and tax liens

Torts

NOTE: The Torts questions should be answered according to principles of general applicability. Examinees are to assume that there is no applicable statute unless otherwise specified; however, survival actions and claims for wrongful death should be assumed to be available where applicable. Examinees should assume that joint and several liability, with pure comparative negligence, is the relevant rule unless otherwise indicated. Approximately half of the Torts questions on the MBE will be based on category II, and approximately half will be based on the remaining categories—I, III, and IV.

I. Intentional torts

- A. Harms to the person, such as assault, battery, false imprisonment, and infliction of mental distress; and harms to property interests, such as trespass to land and chattels, and conversion
- B. Defenses to claims for physical harms
 - 1. Consent
 - 2. Privileges and immunities: protection of self and others; protection of property interests; parental discipline; protection of public interests; necessity; incomplete privilege

II. Negligence

- A. The duty question, including failure to act, unforeseeable plaintiffs, and obligations to control the conduct of third parties
- B. The standard of care
 - 1. The reasonably prudent person: including children, physically and mentally impaired individuals, professional people, and other special classes
 - 2. Rules of conduct derived from statutes and custom
- C. Problems relating to proof of fault, including res ipsa loquitur
- D. Problems relating to causation
 - 1. But for and substantial causes
 - 2. Harms traceable to multiple causes
 - 3. Questions of apportionment of responsibility among multiple tortfeasors, including joint and several liability
- E. Limitations on liability and special rules of liability
 - 1. Problems relating to “remote” or “unforeseeable” causes, “legal” or “proximate” cause, and “superseding” causes
 - 2. Claims against owners and occupiers of land
 - 3. Claims for mental distress not arising from physical harm; other intangible injuries
 - 4. Claims for pure economic loss

- F. Liability for acts of others
 - 1. Employees and other agents
 - 2. Independent contractors and nondel-
egable duties
- G. Defenses
 - 1. Contributory fault, including common
law contributory negligence and last
clear chance, and the various forms of
comparative negligence
 - 2. Assumption of risk
- III. Strict liability and products liability: common
law strict liability, including claims arising from
abnormally dangerous activities, and defenses
to such claims; claims against manufactur-
ers and other defendants arising out of the
manufacture and distribution of products, and
defenses to such claims
- IV. Other torts
 - A. Claims based on nuisance, and defenses
 - B. Claims based on defamation and invasion
of privacy, defenses, and constitutional
limitations
 - C. Claims based on misrepresentations, and
defenses
 - D. Claims based on intentional interference
with business relations, and defenses

MBE Scores

The Scoring Process

After an MBE is administered, the performance of each test question is reviewed and evaluated by content and testing experts. This final review is conducted to ensure that the exam is graded fairly, particularly with regard to any questions affected by recent changes in the law.

Once the post-examination review is complete, MBE answer sheets are scanned and centrally scored. Both a raw score and a scaled score are computed for each examinee. A raw score is the number of questions answered correctly. Raw scores from different administrations of the MBE are not comparable, primarily due to differences in the difficulty of the questions from one administration to the next. The statistical process of equating adjusts for variations in the difficulty of the questions, producing scaled scores that represent the same level of performance across all MBE administrations. For instance, if the questions appearing on the July MBE were more difficult than those appearing on the February MBE, then the scaled scores for the July MBE would be adjusted upward to account for this difference. These adjustments ensure that no examinee is unfairly penalized or rewarded for taking a more or less difficult exam.

MBE Score Services

NCBE offers three MBE score services:

- score transfers from one jurisdiction to another,
- score releases to examinees, and
- score advisories to examinees.

NCBE is authorized to perform MBE score services for only **some** U.S. jurisdictions. The decision to authorize NCBE to perform a particular service is exclusively under the control of the testing jurisdiction. Lists of jurisdictions that authorize NCBE to perform various MBE score services are on pages 16–17 and are also available at **www.ncbex.org**. Since rules and policies of jurisdictions change, examinees are strongly advised to consult the jurisdictions directly for the most current information. Contact information for jurisdictions can be found in the Bar Admission Offices Directory at **www.ncbex.org**.

MBE Score Transfers

Examinees who would like to have their MBE scores transferred to other jurisdictions must submit a request to NCBE for a score transfer. Lists of jurisdictions that authorize NCBE to perform MBE score transfers and that accept transferred MBE scores from NCBE are available on page 16.

MBE Score Releases

Examinees who would like to learn their scores on the MBE may request a score release. A list of jurisdictions that authorize NCBE to release MBE scaled scores is available on page 17.

MBE Score Advisories

Certain jurisdictions do not inform examinees of their MBE scores and do not authorize NCBE to release MBE scores to examinees, but do authorize NCBE to provide score advisories. Examinees who would like to learn if a previously earned MBE score is sufficient for admission without examination in the District of Columbia or Minnesota may request a score advisory. A score advisory will **not** state the examinee's scaled MBE score but will advise if the examinee's score meets or exceeds the score required by the District of Columbia (MBE scaled score of 133) and Minnesota (MBE scaled score of 145) to qualify for admission without examination. A list of jurisdictions that authorize NCBE to perform score advisories is available on page 17.

NCBE is not authorized to transfer or release any MBE score information until after the testing jurisdiction has released its examination results and/or furnished authorization to NCBE.

Ordinarily, MBE score services are processed the next business day after receipt of payment, but not until after the testing jurisdiction has released its examination results and/or furnished authorization to NCBE.

Maximum Age of Scores

NCBE performs score services only for MBE scaled scores that are seven years old or less. For scores older than seven years, examinees should contact their testing jurisdiction or the jurisdiction to which they are seeking admission to obtain admission rules pertaining to older MBE scores. Contact information for jurisdictions can be found in the Bar Admission Offices Directory at **www.ncbex.org**.

Identifying Examinees' MBE Scores

Examinees must complete all required fields in the MBE Score Services Request Form. Additionally, examinees must have provided sufficient biographic information on their MBE answer sheets to identify their scores at the time they tested. NCBE may refuse to provide MBE score services if the examinee's score cannot be identified with confidence.

Fees

A \$25 fee is required for each transaction. Each score transfer, score release, or score advisory is considered a separate transaction. This fee may be paid by check made payable to NCBE, or by credit card (MasterCard or Visa only). Payment by check must be mailed to NCBE with a printout of the confirmation page at the end of the MBE Score Services Request Form and may significantly delay the processing of score services. No score services will be performed until credit card information is processed or until a check is received with a printout of the confirmation page. **Refunds will not be provided for any reason. It is the examinee's responsibility to read these instructions carefully before requesting any score services and to verify that he or she has provided the correct information.**

How to Submit a Request

All MBE score services requests must be submitted through the examinee's NCBE account. Examinees can create an NCBE account at www.ncbex.org/ncbe-number. Score releases and score advisories are posted to the File Cabinet in the examinee's NCBE account.

MBE Concurrent Score Transfers

With proper scheduling and approval by the jurisdictions involved, an examinee may be permitted to take the bar examination in two jurisdictions over a period of three days. **One of the two jurisdictions must administer its local examination on Tuesday and the other must administer its local examination on Thursday.** The examinee will take the local examination in the first jurisdiction on Tuesday, the MBE in either jurisdiction on Wednesday, and the local examination in the second jurisdiction on Thursday. Arrangements to use the MBE score in conjunction with two concurrent bar examinations must be made through the jurisdictions that allow concurrent use of scores. It is the examinee's responsibility to verify that his or her MBE score will be available by the receiving jurisdiction's deadline.

Authorization by Jurisdiction

Jurisdictions That Authorize NCBE to Perform MBE Score Transfers

If your testing jurisdiction is not included in this list, you must contact that jurisdiction for assistance.

Alabama	Florida	Maryland	South Dakota
Arizona	Georgia	Minnesota	Tennessee
California	Guam	Montana	Utah
Colorado	Hawaii	Nebraska	Virgin Islands
Delaware	Indiana	New Jersey	Washington
District of Columbia	Kansas	New Mexico	Wisconsin
	Kentucky	North Dakota	Wyoming

Jurisdictions That Accept Transferred MBE Scores from NCBE

If the jurisdiction to which you seek admission is not included in this list, you must contact that jurisdiction for assistance.

Alabama	Massachusetts*	Palau
Arkansas	Michigan**	Rhode Island*
Connecticut	Minnesota	South Carolina*
District of Columbia	Mississippi	South Dakota
Idaho	Missouri	Utah*
Illinois	New Hampshire*	Vermont
Indiana*	New Jersey*	Virgin Islands
Iowa	New Mexico*	West Virginia
Kansas	New York*	Wisconsin
Kentucky	North Dakota	
Maine	Northern Mariana Islands	
Maryland*	Oklahoma*	

*concurrent only **reciprocal only

Jurisdictions That Authorize NCBE to Release MBE Scaled Scores

Examinees sitting in the following jurisdictions may request their scores only from NCBE, as these jurisdictions do not provide score information directly to examinees:

Alabama
Indiana
Minnesota

The following jurisdictions, which release scores directly to examinees, authorize NCBE only to provide a replacement copy of an examinee's score if an examinee requires a replacement copy after scores are initially released by the jurisdiction:

Arizona	Georgia	New Jersey	Virgin Islands
Delaware	Kansas	New Mexico	Washington
District of Columbia	Maryland	North Dakota	Wisconsin
Florida	Montana	Utah	Wyoming

Jurisdictions That Authorize NCBE to Perform Score Advisories for DC and MN

Score advisories will advise examinees if a previously earned MBE score is sufficient for admission without examination in the District of Columbia or Minnesota.

California
Guam
Hawaii
Kentucky
South Dakota

MBE Sample Questions

While the sample questions in this booklet illustrate the kinds of questions that will appear on the MBE, they do not represent all the material covered. Examinees are advised to review the information on MBE content provided in this booklet, including the subject matter outlines, before attempting to answer the sample questions. To model the pacing required to complete a full MBE, these questions should be answered in approximately 32 minutes. An answer key follows on page 26.

Sample Questions

1. A father lived with his son, who was addicted to crack cocaine. Under its influence, the son often became violent and physically abused his father. As a result, the father always lived in fear. One night, the father heard his son on the front stoop making loud obscene remarks. The father was certain that his son was under the influence of crack and was terrified that he would be physically beaten again. In his fear, he bolted the front door and took out a revolver. When the son discovered that the door was bolted, he kicked it down. As the son burst through the front door, his father shot him four times in the chest, killing him. In fact, the son was not under the influence of crack or any drug and did not intend to harm his father.

At trial, the father presented the above facts and asked the judge to instruct the jury on self-defense.

How should the judge instruct the jury with respect to self-defense?

- (A) Give the self-defense instruction, because it expresses the defense's theory of the case.
 - (B) Give the self-defense instruction, because the evidence was sufficient to raise the defense.
 - (C) Deny the self-defense instruction, because the father was not in imminent danger from his son.
 - (D) Deny the self-defense instruction, because the father used excessive force.
2. A man sued a railroad for personal injuries suffered when his car was struck by a train at an unguarded crossing. A major issue is whether the train sounded its whistle before arriving at the crossing. The railroad has offered the testimony of a resident who has lived near the crossing for 15 years. Although she was not present on the occasion in question, she will testify that, whenever she is home, the train always sounds its whistle before arriving at the crossing.

Is the resident's testimony admissible?

- (A) No, due to the resident's lack of personal knowledge regarding the incident in question.
- (B) No, because habit evidence is limited to the conduct of persons, not businesses.
- (C) Yes, as evidence of a routine practice.
- (D) Yes, as a summary of her present sense impressions.

3. To keep its public school expenditures under control in a time of increasing costs, a state passed a law providing that children who have not lived in the state for at least one year cannot attend public schools in the state.

Which of the following statements about this law is most accurate as a matter of constitutional law?

- (A) The one-year residence requirement is valid because it does not affect any fundamental right or suspect class.
 - (B) State durational residence requirements that are established for publicly funded services are constitutional because they relate to government operations reserved exclusively to the states by the Tenth Amendment.
 - (C) Because publicly funded education is a fundamental constitutional right, a state may not deny it to any class of persons who reside in that state.
 - (D) State durational residence requirements established for this kind of publicly funded service solely for the purpose of reducing state expenditures violate the equal protection clause of the Fourteenth Amendment.
4. A man has four German shepherd dogs that he has trained for guard duty and that he holds for breeding purposes. The man has “Beware of Dogs” signs clearly posted around a fenced-in yard where he keeps the dogs. The man’s next-door neighbor frequently walks past the man’s house and knows about the dogs’ ferocity. One summer day, the neighbor entered the man’s fenced-in yard to retrieve a snow shovel that the man had borrowed during the past winter. The neighbor was attacked by one of the dogs and was severely injured.

In a suit against the man, is the neighbor likely to prevail?

- (A) No, because the neighbor knew that the man had dangerous dogs in the yard.
 - (B) No, because the neighbor was trespassing when he entered the man’s property.
 - (C) Yes, because the neighbor was an invitee for the purpose of retrieving the shovel.
 - (D) Yes, because the man was engaged in an abnormally dangerous activity.
5. A man owned a house where he lived with his family. The man was convicted of selling large quantities of an illegal drug from his house. Acting under a state law authorizing the destruction of buildings that are used for illegal activity, the city destroyed the man’s house.

The man’s family then rented an apartment and demanded that the city pay the rent for that temporary residence. The family relied on a state law providing that any person who was dispossessed of his or her place of residence because of the actions of city officials was entitled to replacement housing at the city’s expense until permanent substitute housing could be found. When the city refused to pay the rent for the apartment, the man’s family sued the city in a state trial court claiming a right to such payment under both the state law and the due process clause of the Fourteenth Amendment to the United States Constitution.

The highest state court ruled for the family. Although the court decided that the family had no right to payment under the state law, it held that the Fourteenth Amendment entitled the family to payment of the rent for the temporary apartment. In its opinion, the highest state court indicated that in several of its decisions it had found

cities liable for compensation in similar situations on the basis of the due process clause of the state constitution. But the highest state court declined to base its holding on the state constitution because that issue had not been properly raised in the case.

The city then filed a petition for a writ of certiorari in the United States Supreme Court.

Does the Court have jurisdiction to review the merits of this case?

- (A) Yes, because the highest state court based its decision wholly on federal law grounds.
- (B) Yes, because the federal and state law issues in this case are so intertwined that a resolution of the federal law issues is necessary to facilitate a proper determination of the state law issues.
- (C) No, because the decision of the highest state court renders the case moot.
- (D) No, because independent state law grounds could have been used to justify the result in this case.

6. A sporting goods shop contracted with a publisher to buy, for sale in its store, 1,200 posters featuring a professional golfer. During production, the image of the golfer was inadvertently reversed and the right-handed golfer appeared to be left-handed. When the posters were delivered on the date provided in the contract, the sporting goods shop noticed the discrepancy, which had no provable significant impact on the effectiveness of the poster. In the opinion of the shop management, however, the posters did not look as good as they had in the catalog from which the shop had ordered them.

Is the sporting goods shop legally entitled to reject the posters?

- (A) No, because the nonconformity does not materially alter the value of the posters to the sporting goods shop.
- (B) No, because the publisher must be given an opportunity to cure the nonconformity before the sporting goods shop can reject the posters.
- (C) Yes, because the posters do not conform to the contract.
- (D) Yes, because the publisher has breached an implied warranty of fitness for a particular purpose.

7. A brother and a sister purchased land under a deed that conveyed title to them as joint tenants with right of survivorship. Common law joint tenancy is unmodified by statute in the jurisdiction.

The purchase price was \$50,000, of which the sister paid \$10,000 and the brother paid \$40,000. The sister later mortgaged her interest in the land. The brother then died testate, leaving his entire estate to a cousin. The sister later paid off her mortgage debt, and the mortgage was released.

At the present time, who owns the land?

- (A) The answer depends on whether the jurisdiction follows the lien theory or the title theory of mortgages.
- (B) Title is entirely in the sister as the surviving joint tenant.
- (C) Title is in the sister and the cousin as equal tenants in common.
- (D) Title is in the sister and the cousin as tenants in common, with the sister having a 20% interest and the cousin having an 80% interest.

8. A young man suggested to his friend that they steal a large-screen TV from a neighbor's house. The friend was angry with the young man and decided to use the opportunity to get even with him by having him arrested. The friend said he would help, and that night, he drove the young man to the neighbor's house. The young man broke in while the friend remained outside. The friend called the police on his cell phone and then drove away. Police officers arrived at the scene just as the young man was carrying the TV out the back door.

The friend is guilty of what offense in a common law jurisdiction?

- (A) No crime.
 - (B) Conspiracy.
 - (C) Burglary.
 - (D) Conspiracy and larceny.
9. The owner of a parcel of land received the following letter from a buyer: "I will pay you \$2,200 an acre for [the parcel]." The owner's letter of reply stated, "I accept your offer." Unknown to the owner, the buyer had intended to offer only \$2,000 per acre but had mistakenly typed "\$2,200." As both parties knew, comparable land in the vicinity had been selling at prices between \$2,000 and \$2,400 per acre.

Which of the following states the probable legal consequences of the correspondence between the parties?

- (A) There is no contract, because the parties attached materially different meanings to the price term.
 - (B) There is no enforceable contract, because the buyer is entitled to rescission due to a mutual mistake as to a basic assumption.
 - (C) There is a contract formed at a price of \$2,000 per acre, as the buyer intended.
 - (D) There is a contract formed at a price of \$2,200 per acre, regardless of the buyer's true intention.
10. Four years ago the owner of a shopping center leased a store in the center for a 10-year term to a pharmacist for use as a drugstore. The pharmacist established and operated a drugstore at the leased premises. The lease included provisions that described the shopping center by metes and bounds; identified the entrances, parking areas, signs, and other common facilities of the shopping center; and set out a covenant that the owner would not lease any part of the shopping center to another drugstore.

Last year the owner purchased a parcel of land immediately adjacent to the shopping center. That parcel was improved with a building that, at the time of the owner's purchase and for ten years earlier, was occupied in part by a food supermarket and in part by a discount drugstore, under leases which the prior owner assigned to the owner.

The owner reconstructed the common facilities of both shopping centers to integrate them and combine them so that, to the public, the two centers appeared as a larger single development.

The pharmacist learned that the lease of the discount drugstore was about to expire and that the owner planned to enter into a new lease of the same space with the discount drugstore.

The pharmacist protested the proposed new lease, but the owner declared his intention to go forward with it. The pharmacist brought an appropriate action to enjoin the new lease to the discount drugstore as a violation of the covenant in the pharmacist's lease.

If the court finds for the owner, what will be the likely reason?

- (A) The covenant in the pharmacist's lease can be fairly construed as to apply only to the original shopping center premises.
- (B) A covenant cannot restrict the use of land not owned by the covenantor when the covenant was created.
- (C) A covenant that attempts to restrict competition is invalid as against public policy even if it runs with the land.
- (D) The drugstore use on the adjacent parcel was in existence when the owner and the pharmacist first entered into the lease.

11. A state law prohibits any barbershop licensed by the state from displaying posters in support of any current candidate for public office or displaying or distributing any campaign literature in support of such a candidate. No other kinds of posters or literature are subject to this prohibition, nor are any other types of commercial establishments in the state subject to similar prohibitions.

Is this law constitutional?

- (A) No, because it treats barbershops differently from other commercial establishments.
- (B) No, because it imposes a restriction on the content or subject matter of speech in the absence of any evidence that such a restriction is necessary to serve a compelling state interest.
- (C) Yes, because it leaves political candidates free to communicate their campaign messages to voters by other means.
- (D) Yes, because the operation of a licensed barbershop is a privilege and, therefore, is subject to any reasonable restriction imposed by the state.

12. A defendant was prosecuted for mail fraud. At trial, the defendant moved to have all witnesses excluded from the courtroom, and the court granted the motion. The government named the investigating FBI agent as its designated representative. Upon learning that the agent would be giving testimony during the trial, the defendant moved that the agent also be excluded from the courtroom.

Should the defendant's motion be granted?

- (A) No, provided that the government can show that the agent's presence is essential to the presentation of its case.
- (B) No, because the government has a right to have its designated representative remain in the courtroom throughout the trial.
- (C) Yes, because the agent's testimony might be influenced by the testimony of other witnesses.
- (D) Yes, because the defendant has a right to exclude all persons who may be called as government witnesses.

13. A manufacturer of electric motors formerly produced motors that utilized as a coolant a chemical substance that was later discovered to be highly toxic. During its manufacturing operations, the manufacturer negligently allowed quantities of this substance to leak into the soil. The Environmental Protection Agency (EPA) ordered that the premises, now owned by an appliance repair shop, be decontaminated. This order, and the subsequent cleanup efforts, received a high level of attention in the local media.

An employee of the appliance repair shop has sued the manufacturer in negligence for damages for emotional distress. The employee claims to have suffered the distress as a consequence of learning that she has been exposed for five years, while employed by the appliance repair shop at the premises affected by the EPA order, to the toxic contamination that has existed there. Her complaint does not allege that her emotional distress is severe, that the manufacturer's conduct was extreme and outrageous, or that she has suffered any physical consequences.

In that action the manufacturer has filed a motion to dismiss for failure to state a claim upon which relief may be granted.

What is the manufacturer's best argument in support of that motion?

- (A) The repair shop employee's emotional distress is not alleged to be severe.
 - (B) The complaint does not allege that the manufacturer's conduct was extreme and outrageous.
 - (C) The complaint does not allege that the repair shop employee suffered any physical consequences.
 - (D) The repair shop employee's proper remedy is in a claim against the repair shop, the occupier of the premises during the period of her alleged exposure.
14. An attempt was made to hijack a commercial airliner while it was in flight from San Francisco to New Orleans. Within minutes, however, the hijacker was seized and the plane proceeded to its destination. Upon the plane's arrival, television stations broadcast pictures of the passengers as they disembarked. Among the passengers pictured on television was a businessman who was supposed to be in Chicago on company business. The disclosure that the businessman was in New Orleans and not in Chicago at the time resulted in the loss of his position with his company and great humiliation and embarrassment for him.

If the businessman asserts a claim against the television stations for broadcasting his picture as he disembarked, is he likely to prevail?

- (A) Yes, because the businessman's location was revealed against his wishes.
- (B) Yes, because publication of the television pictures caused the businessman pecuniary loss.
- (C) No, because the humiliation and embarrassment did not result in physical harm to the businessman.
- (D) No, because the scene shown on television was newsworthy.

15. A company contracted with a builder to construct a new corporate headquarters for a fixed price of \$100 million. At the time of the contract, structural steel was widely available and was included in the contract as a \$6 million item. Before work began on the project, tornado damage shut down the production facility of the biggest structural steel supplier in the country, and the price of structural steel increased by 20% as a result. The builder informed the company of the steel price increase, and the parties then orally agreed to increase the project price to \$101 million.

The builder proceeded with construction and delivered the project on time. The company paid the builder \$100 million but refused to pay the additional \$1 million.

If the builder sues the company for \$1 million, is the builder likely to prevail?

- (A) No, because the modification was never reduced to a writing signed by the party to be charged.
 - (B) No, because there was no consideration for the modification of the contract.
 - (C) Yes, because the company's promise was supported by consideration.
 - (D) Yes, because the modification was fair and equitable in view of the unanticipated increase in the price of structural steel.
16. At a defendant's trial for extortion, the prosecutor called a witness expecting her to testify that she had heard the defendant threaten a man with physical harm unless the man made payoffs to the defendant. The witness denied ever having heard the defendant make such threats, even though she had testified to that effect before the grand jury. The prosecutor now seeks to admit the witness's grand jury testimony.

How should the court rule with regard to the grand jury testimony?

- (A) Admit the testimony, because it contains a statement by a party-opponent.
 - (B) Admit the testimony, both for impeachment and for substantive use because the witness made the inconsistent statement under oath at a formal proceeding.
 - (C) Admit the testimony under the former testimony exception to the hearsay rule.
 - (D) Exclude the testimony for substantive use, because it is a testimonial statement.
17. A condominium development consists of two buildings, one with balconies attached to each unit, and one with no balconies. For safety concerns, the condominium association amended the covenants and restrictions to prohibit future sales of balcony units to families with minor children. The amendment did not affect families with children already living in balcony units. The amendment was promptly recorded. The condominium association had a valid covenant providing that all sales had to be approved by the association.

Subsequent to the effective date of the amendment, the owner of a balcony unit contracted to sell it to a family with minor children. Before the closing, the association told the buyers that because they had minor children, they could not buy the unit. The association further told the buyers that numerous units were available in the building without balconies.

After receiving this notification, the buyers complained to a fair housing agency, claiming that the amendment was unenforceable because it violated federal fair housing laws.

Is there reasonable cause to believe that a violation has occurred?

- (A) No, because families with children are allowed to purchase units in the building without balconies.
- (B) No, because the amendment is based on legitimate safety issues.
- (C) Yes, because families with children are already living in units with balconies.
- (D) Yes, because families with children cannot be segregated within the condominium development.

18. The president of a pharmaceutical firm received a report from his testing bureau that a manufactured lot of the firm's anti-cancer prescription medication was well below strength. Concerned about being able to fulfill contractual commitments, the president instructed his staff to deliver the defective lot. A cancer patient who had been maintained on the drug died shortly after beginning to take the defective pills. Medical evidence established that the patient would have lived longer had the drug been at full strength, but would have died before long in any event.

The president was convicted of murder. On appeal, he argues that his conviction should be reversed.

Should the conviction be reversed?

- (A) No, because the intentional delivery of adulterated or mislabeled drugs gives rise to strict criminal liability.
- (B) No, because the jury could have found that the president's conduct was sufficiently reckless to constitute murder.
- (C) Yes, because distribution of the defective lot was only a regulatory offense.
- (D) Yes, because the cancer, not the president's conduct, was the proximate cause of death of the patient.

Answer key follows on page 26.

Answer Key

- | | | |
|------|-------|-------|
| 1. B | 7. A | 13. C |
| 2. C | 8. A | 14. D |
| 3. D | 9. D | 15. D |
| 4. A | 10. A | 16. B |
| 5. A | 11. B | 17. D |
| 6. C | 12. B | 18. B |



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